

## Manager Workplace Sexual Harassment Prevention Toolkit:

(Your guide to preventing and addressing sexual harassment in the workplace)

| Question:                                                                                                 | Answer:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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| <b>What is sexual harassment?</b>                                                                         | <p>Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:</p> <ol style="list-style-type: none"><li>1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;</li><li>2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or</li><li>3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.</li></ol> |
| <b>What are unwelcome sexual advances?</b>                                                                | <p>Unwelcome sexual advances constitute sexual harassment when submission to such conduct is made either explicitly or implicitly as a term or condition of an individual's employment.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>What law(s) are violated by sexual harassment?</b>                                                     | <p>Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. Title VII applies to employers with 15 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations, as well as to the federal government.</p>                                                                                                                                                                                                                                                                                                                                                      |
| <b>What course of action should a manager take if a sexual harassment claim is brought to him or her?</b> | <p>As a manager you must initiate an immediate administrative inquiry process by contacting your employee relations specialist who will assist you in conducting an investigation intended to gather information to determine what action, if any, should be taken. This information is not intended for legal or criminal prosecution. You may locate your employee relations specialist by clicking the following link <a href="#">Employee Relations Contacts</a>.</p>                                                                                                                                                                                                        |

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| <p><b>What course of action should a manager take if a sexual harassment claim is brought against him or her?</b></p>                                   | <p>If a sexual harassment claim has been brought against you your behavior will be under increased scrutiny. To avoid exacerbating the situation you should not engage in the behavior cited in the complaint. The NIH is committed to promoting and maintaining a work environment free from discrimination and retaliation. Reprisal for participation in the EEO process is prohibited. Therefore, any retaliation against the complainant is barred. It is strongly advised that any behavior that could be perceived as retaliatory be strictly avoided. It is imperative that you be supportive and cooperative of the resolution process and maintain a record of relevant communications and events.</p> |
| <p><b>What course of action should a manager take if the victim elects to not pursue the complaint?</b></p>                                             | <p>The National Institutes of Health is legally obligated to investigate any potential allegations of sexual harassment once it is notified of its existence. Once management is made aware of potentially unlawful behavior it is duty bound to investigate regardless of the victim's wishes.</p>                                                                                                                                                                                                                                                                                                                                                                                                              |
| <p><b>Suppose the employee wants to talk about the sexual harassment but does not want the manager to do anything about it?</b></p>                     | <p>Once a manager is on notice that there is workplace sexual harassment you are obligated to act. A manager's knowledge of the situation puts the agency on official notice that illegal discrimination is occurring. The manager should tell the employee that now that they know what is going on that they have an obligation to conduct an administrative inquiry into the matter and to take action if inappropriate behavior is found.</p>                                                                                                                                                                                                                                                                |
| <p><b>What course of action should a manager take if he or she witnesses sexual harassment?</b></p>                                                     | <p>Any manager who witnesses an act of potential sexual harassment is required to initiate an immediate administrative inquiry process. You may locate your employee relations specialist who can assist you in conducting an investigation by clicking the following link <a href="#">Employee Relations Contacts</a>.</p>                                                                                                                                                                                                                                                                                                                                                                                      |
| <p><b>What course of action should a manager take if he or she learned of the sexual harassment via informal channels such as gossip or rumors?</b></p> | <p>To prevent sexual harassment in the workplace management must take a proactive, not reactive, stance to sexual harassment. Being proactive means adopting the NIH's zero tolerance harassment policy. Managers should investigate all allegations of sexual harassment regardless of how he or she was made aware of the allegations.</p>                                                                                                                                                                                                                                                                                                                                                                     |

| <b>Examples of Sexual Harassment</b><br>TO PREVENT IT YOU MUST BE ABLE TO IDENTIFY IT                                                                                                                 |                                                                                                                                     |
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| <b>Verbal:</b>                                                                                                                                                                                        | <b>Visual:</b>                                                                                                                      |
| Sexual jokes<br><br>Whistling, kissing sounds, and smacking lips<br><br>Repeatedly asking someone to make romantic plans, a date<br><br>Sexual comments regarding someone's person                    | Staring<br><br>Looking someone up and down<br><br>Displaying images of a sexual nature<br><br>Winking, blowing kisses, licking lips |
| <b>Written:</b>                                                                                                                                                                                       | <b>Physical:</b>                                                                                                                    |
| Electronic forms of written communication such as e-mails, texts, electronic posts of a sexual nature<br><br>Hard copy forms of written communication such as letters and graffiti of a sexual nature | Touching someone's person<br><br>Touching oneself in a sexual manner while near another person<br><br>Blocking or crowding someone  |

| <b>Area:</b>       | <b>Key Points:</b>                                                                                                                                                                                                                                                                   |
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| <b>Victim</b>      | <ul style="list-style-type: none"> <li>The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.</li> <li>The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.</li> </ul> |
| <b>Harasser(s)</b> | <ul style="list-style-type: none"> <li>The harasser(s) can be the victim's supervisor, a supervisor in another area, a co-worker, an agent of the NIH, another NIH employee, or a non-employee who has a business relationship with the NIH.</li> </ul>                              |

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| <b>Action(s)</b> | <ul style="list-style-type: none"> <li>• Unlawful sexual harassment may occur without economic injury to or discharge of the victim.</li> <li>• The harasser's conduct must be unwelcome.</li> </ul> |
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### What You Should Know, But Probably Don't

- The NIH is automatically liable for sexual harassment that results in a significant change in an individual's employment status (hiring, firing, promotions, demotions, undesirable reassignment) regardless of upper management's level of knowledge.
- A victim's submission to sexual activity is not a defense to avoid liability.
- Sexual harassment is an abuse of power it is not an expression of sexual attraction.

### How to Prevent Workplace Harassment

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| <ul style="list-style-type: none"> <li>• Post the NIH's EEO policy in a highly visible physical or electronic location</li> <li>• Disseminate the NIH's EEO policy to everyone and often</li> <li>• Firmly and consistently enforce the NIH's EEO policy</li> <li>• Monitor behavior. Acquire a sense of what is normal and abnormal workplace behavior for your employees.</li> <li>• Respond to all allegations immediately.</li> </ul> | <ul style="list-style-type: none"> <li>• Once a manager is put on notice that an employee or applicant finds a behavior objectionable the manager should promptly put an end to the behavior</li> <li>• Treat all complaints seriously, consistently, and confidentially</li> <li>• Be sensitive but neutral.</li> <li>• Follow up with both the harasser(s) and the victim</li> <li>• Document your actions</li> <li>• Avoid even the appearance of retaliation. For example if an employee must be removed from the workplace do not remove the alleged victim</li> </ul> |
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### Case Examples:

| Addresses:                                                  | Case:                                                     |
|-------------------------------------------------------------|-----------------------------------------------------------|
| Substantial employment change employer automatically liable | <u><i>Faragher v. City of Boca Raton 1998</i></u>         |
| Substantial employment change employer automatically liable | <u><i>Burlington Industries, Inc. v. Ellerth 1998</i></u> |
| Voluntary does not necessarily mean welcome                 | <u><i>Meritor Savings Bank v. Vinson</i></u>              |

## **Contacts:**

WHO TO ASK ABOUT WHAT

### [Employee Relations Contacts.](#)

[Division of Complaints Management and Resolution](#)

[Identify Your Formal Complaints Specialist](#)

[Office of Equal Opportunity and Diversity Management contact](#)

[NIH Ombudsman contact](#)

## **Resources:**

WHERE TO GO FOR MORE INFORMATION

[Title VII of the Civil Rights Act of 1964](#)

[29 C.F.R. Section 1604.11](#)

[EEOC Facts About Sexual Harassment](#)

[NIH Procedures for Handling Allegations of Sexual Harassment](#)